Supreme Court, U.S.
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No. 92-1114

In the Supreme Court of the United States

OCTOBER TERM, 1992

NANCY JOHNSON, PETITIONER

v.

UNITED STATES RAILROAD RETIREMENT BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly concluded that the district court was not authorized to consider petitioner's challenge to a determination by the Railroad Retirement Board regarding the circumstances under which the Board would award benefits.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	6
Conclusion	9
Appendix	1a

TABLE OF AUTHORITIES

Cases:

Chevron U.S.A. Inc. v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)	6
Costello v. *United States Railroad Retirement Board*, 780 F.2d 1352 (8th Cir. 1985)	4
McNary v. *Haitian Refugee Center, Inc.*, 498 U.S. 499 (1991)	5, 8

Statutes and regulation:

Administrative Procedure Act, 5 U.S.C. 701 *et seq.*:	
5 U.S.C. 701(a)(1)	8
5 U.S.C. 704	8
Railroad Retirement Act of 1974, 45 U.S.C. 231 *et seq.* (1988 & Supp. II 1990)	2
45 U.S.C. 231a	2
45 U.S.C. 231a(c)(1)	2
45 U.S.C. 231a(d)(1)(ii)	2
45 U.S.C. 231a(d)(1)(iii)	2
45 U.S.C. 231b	2
45 U.S.C. 231b(a)(1)	2
45 U.S.C. 231b(b)	2
45 U.S.C. 231c (1988 & Supp. II 1990)	2
45 U.S.C. 231c(a)(1) (1988 & Supp. II 1990)	2
45 U.S.C. 231c(b)	2
45 U.S.C. 231c(f)(1)	2
45 U.S.C. 231c(g)	2

Statutes and regulation—Continued: Page

45 U.S.C. 231f(a) 2
45 U.S.C. 231g 2, 4
Railroad Unemployment Insurance Act, 45 U.S.C. 351 *et seq.* 2
45 U.S.C. 355 (1988 & Supp. II 1990) 7
45 U.S.C. 355(c)(7) (1988 & Supp. II 1990) 7
45 U.S.C. 355(f) (1988 & Supp. II 1990) 3, 4, 7
45 U.S.C. 355(g) 3, 7
8 U.S.C. 1255a (1988 & Supp. III 1991) 8
8 U.S.C. 1255a(f) 8
28 U.S.C. 1631 4
42 U.S.C. 402(s)(1) 3
20 C.F.R. 216.2 2

Miscellaneous:

Railroad Retirement Board Order No. 92-263 (Aug. 14, 1992) 6, 1a
Robert L. Stern et al., *Supreme Court Practice* (6th ed. 1986) 7

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OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-38a) is reported at 969 F.2d 1082. The orders of the district court (Pet. App. 40a-42a, 43a-44a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 10, 1992. A petition for rehearing was denied on September 11, 1992. Pet. App. 39a. On December 1, 1992, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 31, 1992. The petition for a writ of certiorari was filed on December 28, 1992. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Railroad Retirement Act of 1974 (the Act), 45 U.S.C. 231 *et seq.* (1988 & Supp. II 1990), establishes a scheme for paying retirement benefits to certain railroad employees, as well as their spouses and certain survivors. See Section 231a. In particular, Sections 231a(c)(1) and 231a(d)(1)(ii) provide for benefits to certain spouses and widows, if they have in their care a child of a covered employee, and Section 231a(d)(1)(iii) provides for benefits to children of deceased covered employees. Sections 231b and 231c set forth a two-tiered framework for calculating the benefits. First, the statute provides for an annuity, commonly referred to as the Tier I benefits, "in an amount equal to the amount * * * of the * * * benefit * * * to which [the individual] would have been entitled under the Social Security Act [if the employment were covered by the Social Security Act]." Sections 231b(a)(1) (employee benefits), 231c(a)(1) (spouses' benefits), 231c(f)(1) (survivors' benefits). Second, the statute creates additional benefits—Tier II benefits —calculated by reference to the employees' pay and length of service. See Sections 231b(b), 231c(b) and (g). See generally 20 C.F.R. 216.2.

The Act is administered by the Railroad Retirement Board, "an independent agency in the executive branch of the Government." 45 U.S.C. 231f(a). Judicial review of decisions of the Board is provided under 45 U.S.C. 231g, which allows review in the same manner as available under the Railroad Unemployment Insurance Act, 45 U.S.C. 351 *et seq.*, except

that the time period for seeking review is one year, rather than 90 days. Under 45 U.S.C. 355(f) (1988 & Supp. II 1990), a claimant may obtain judicial review by filing a petition for review in the United States court of appeals for the circuit in which the claimant resides, or in the Seventh or D.C. Circuit. Finally, Section 355(g) precludes alternate forms of review by stating:

> Findings of fact and conclusions of law of the Board in the determination of any claim * * * [and] the determination of any other matter pursuant to [the claim review procedures] shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons * * * and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

2. Petitioner, the wife of a former railroad employee, began receiving a spouse's annuity under the Act in 1976. In November 1986, the Board notified petitioner that her annuity would be reduced in April 1987, when her youngest child turned sixteen. The Board explained its conclusion that petitioner was entitled to both Tier I and Tier II benefits until her youngest child reached the age of sixteen, but only Tier II benefits after that child's sixteenth birthday. The Board's view rested on the provisions of the Social Security Act that limit children's social security benefits to those who have not attained the age of sixteen. 42 U.S.C. 402(s)(1). Because Tier I benefits are to be granted in an amount equal to the social security benefit an adult would receive who had such a child in their care, the Board reasoned that a

child whose age would not make his caretaker eligible for any social security benefit should not make his caretaker eligible for the analogous benefit under the Act. Although petitioner sought reconsideration, the Board adhered to its position. C.A. App. 18-19.[1]

Petitioner filed a timely administrative appeal, arguing that the decision was contrary to the decision of the Eighth Circuit in *Costello* v. *United States Railroad Retirement Board*, 780 F.2d 1352 (1985). The appeals referee rejected her challenge, C.A. App. 27-33,[2] and the Board affirmed the decision of the referee without opinion. C.A. App. 37-38. Member Chamberlain dissented, arguing that the Board should acquiesce in the decision of the Eighth Circuit in *Costello*. *Id.* at 38.

3. Petitioner then filed this action in the United States District Court for the District of Columbia, seeking to set aside the Board's determination and seeking certification of a nationwide class of similarly situated beneficiaries under the Act. In response to the government's motion, the court issued an order transferring the case to the D.C. Circuit under 28 U.S.C. 1631, based on the view that 45 U.S.C. 231g and 45 U.S.C. 355(f) (1988 & Supp. II 1990) establish exclusive jurisdiction in the courts of appeals. Pet. App. 40a-42a. Although petitioner contested the court's interpretation of its jurisdiction, she requested the court to dismiss the action in

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[1] We have lodged with the Clerk a copy of the appendix filed in the court of appeals.

[2] An earlier appeals referee reached the same conclusion (C.A. App. 22-26), but the decision was reopened and explained further in the opinion cited in the text.

preference to a transfer to the court of appeals. The government did not file an objection to petitioner's request. The district court then dismissed the action for lack of jurisdiction. *Id.* at 43a-44a.

4. The court of appeals affirmed. Pet. App. 1a-38a. The court explained that a cause of action in the district court under the Administrative Procedure Act (APA) would be available only "in the absence or inadequacy" of review proceedings set forth in the Act itself. *Id.* at 5a-6a (emphasis omitted). The court then considered whether the Act provides adequate judicial review for petitioner's claim.

Noting that the Act provides for judicial review of "any final decision" of the Board, and that its provisions are designed to be conclusive with respect to "the determination of any * * * matter," the court concluded that the review available in the courts of appeals under the Act extended to her claim. Pet. App. 6a-7a. The court also determined that review in the court of appeals was adequate, *id.* at 9a-11a, rejecting petitioner's reliance on *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 499 (1991). The court reasoned that the statutory scheme at issue here contained none of the features that made review in the court of appeals impracticable in *McNary*. Pet. App. 11a. Accordingly, the court of appeals affirmed the district court's dismissal of petitioner's class action.[3]

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[3] In the same opinion, the court of appeals disposed of a petition for review petitioner filed challenging the Board's denial of benefits in her individual case. A majority of the panel reversed the Board's ruling in that regard. Pet. App. 12a-20a. Judge Buckley dissented (*id.* at 28a-38a), arguing that the Board's interpretation of the statute was reasonable and

ARGUMENT

Petitioner seeks review of the court of appeals' determination that the district court had no jurisdiction over her action challenging the Board's refusal to award benefits to spouses and widows with children who have reached the age of 16. The petition no longer presents a justiciable controversy, however, because the Board has reversed its interpretation of the governing statute and granted petitioner the benefits she sought. The petition accordingly should be denied. If the Court does not share our view of justiciability, however, we believe it would be appropriate to hold the petition pending resolution of *Reno* v. *Catholic Social Services*, No. 91-1826.

1. Petitioner's complaint in this case challenged the Board's policy of terminating Tier I benefits for spouses and widows when the recipient's youngest child turns 16. C.A. App. 6-7. Petitioner argued that such benefits should be paid until the child reached the age of 18. *Id.* at 6. The complaint asked the court to enter a declaratory judgment that the Board's interpretation of the statute was incorrect and to enjoin the Board to adhere to petitioner's interpretation. *Id.* at 15-17. That complaint no longer presents a justiciable controversy.

In response to the decision of the court of appeals overturning the Board's denial of relief to petitioner, the Board has receded from the challenged policy. Railroad Retirement Board Order No. 92-263 (Aug. 14, 1992), App., *infra*, 1a-2a. As the Board explains in

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entitled to deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

that order: "Effective August 1, 1992, no tier I annuity component of any spouse annuitant, and no tier I annuity component of any widow or widower annuitant, shall be terminated by reason of a child in care attaining age 16." *Id.* at 2a. The Board also stated that payments that had been cut off in reliance on the old policy, in cases that had not yet become final, would be reinstated effective August 1, 1992. *Ibid.* Because the Board has now adopted on a nationwide basis the interpretation of the statute advanced by petitioner, and expressly ordered the payment of the benefits requested by petitioner, *id.* at 1a, the case no longer presents a controversy suitable for resolution by the federal courts. Accordingly, the controversy has abated and the Court therefore should deny the petition for a writ of certiorari. See Robert L. Stern et al., *Supreme Court Practice* 721-722 (6th ed. 1986).

2. On the merits of the jurisdictional question, we believe the decision of the court of appeals correctly applied the settled principles established by this Court. Section 355(f) of Title 45 provides for judicial review in the court of appeals, and Section 355(g) states that the "determination of any claim * * * [and] the determination of any other matter [by the Board] * * * shall not be subject to review in any manner other than that set forth in subsection (f) of this section." See also Section 355(c)(7) ("Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f) of this section."). Accordingly, in our view, Section 355 expressly precludes alternate

forms of judicial review. Hence, under 5 U.S.C. 701(a)(1), petitioner had no cause of action under the Administrative Procedure Act. Similarly, because the procedures for review established by the Act are adequate, review was not independently available under the APA. See 5 U.S.C. 704 (actions are reviewable under the APA only if "there is no other adequate remedy in a court").

Nevertheless, if the Court concludes that a justiciable controversy persists, it would not be inappropriate for the Court to hold the petition pending disposition of *Reno* v. *Catholic Social Services*, No. 91-1826. In that case, we have argued that the provisions of 8 U.S.C. 1255a(f) bar district courts from hearing class actions challenging rules the Attorney General uses to determine whether to grant relief under 8 U.S.C. 1255a (1988 & Supp. III 1991). See 91-1826 Pet. Br. 17-28. Respondents in that case have argued that this Court's decision in *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 499 (1991), stands for a broad principle allowing district court jurisdiction in all cases that involve a challenge to a general policy, rather than a challenge to the treatment of a single application. See, *e.g.*, 91-1826 Resp. Br. 23-24. If the Court were to adopt respondents' view of the matter, it is possible that the Court's analysis would affect the correctness of the analysis of the court of appeals in this case.[4]

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[4] It does not seem appropriate to hold the case pending decision of *Thunder Basin Coal Company* v. *Reich*, No. 92-896 (cert. granted Mar. 8, 1993). The question in that case is whether a statute that vests exclusive jurisdiction for judicial review in the courts of appeals precludes review in the district

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1993

courts under the Administrative Procedure Act. The question in *CSS* and *Johnson*, by contrast, is whether a statute that plainly precludes alternate forms of review of certain questions in the district courts extends to general challenges to an agency's determinations regarding the circumstances under which it will grant benefits.

APPENDIX

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD

TRANSCRIPT OF BOARD ORDERS

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT OF BOARD ORDER(S) NUMBERED 92-263

ISSUED BY THE BOARD ON August 14, 1992

/s/ Beatrice Ezerski
BEATRICE EZERSKI
Secretary to the Board

B.O. 92-263

DECISION OF UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT IN NANCY JOHNSON V. U.S. RAILROAD RETIREMENT BOARD

In a decision dated July 10, 1992, the United States Court of Appeals for the District of Columbia Circuit reversed the Board's decision which had affirmed the termination of the tier I component of Nancy Johnson's spouse annuity when her child attained age 16. Based on the Court's Order, the Director of Retirement Benefits is directed to award Nancy Johnson a tier I spouse annuity for the period beginning with the termination of that benefit and ending when her youngest child attained age 18.

In addition, based on a review of the decision in Nancy Johnson v. United States Railroad Retirement Board, No. 90-1243, the Railroad Retirement Board has determined to reverse its earlier position with respect to the payment of tier I benefits to spouses, widows, and widowers who have in their care a child between the ages of 16 and 18. To implement this new policy the Board hereby orders:

1. Effective August 1, 1992, no tier I annuity component of any spouse annuitant, no tier I annuity component of any widow or widower annuitant, shall be terminated by reason of a child in care attaining age 16.

2. In any case where the tier I annuity component of a spouse, widow, or widower has been terminated on the basis of the child attaining age 16, and the spouse, widow, or widower has filed a timely appeal from such decision, which appeal has not been finally decided prior to August 1, 1992, payment of the tier I annuity component shall be reinstated effective August 1, 1992.

3. In any case where the tier I component of a spouse, widow, or widower annuity was not terminated in accordance with the policy in effect prior to this Order and where recovery of any resulting overpayment is not being made as of July 31, 1992, recovery of such overpayment shall be waived.